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PPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/805,748	03/13/2001	Srinivas Gutta	US 010064	2712
24737 759	90 09/08/2005		EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			FLETCHER, JAMES A	
P.O. BOX 3001 BRIARCLIFF N	MANOR, NY 10510		ART UNIT PAPER NUMBER	
		•	2616	
			D. CT 14. W TD 00/00/005	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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	;·*	Application No.	Applicant(s)				
e j	Advisory Action	09/805,748	GUTTA ET AL.				
ı	Before the Filing of an Appeal Brief	Examiner	Art Unit				
		James A. Fletcher	2616	:			
	The MAILING DATE of this communication appe	ars on the cover sheet with the c	orrespondence add	iress			
THE	HE REPLY FILED <u>17 August 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.						
1. 🛚	The reply was filed after a final rejection, but prior to or on this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a No a Request for Continued Examination (RCE) in compliance time periods:	the same day as filing a Notice of wing replies: (1) an amendment, aff tice of Appeal (with appeal fee) in one with 37 CFR 1.114. The reply mu	Appeal. To avoid abaidavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)			
	The period for reply expires <u>3</u> months from the mailing date The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire to	dvisory Action, or (2) the date set forth					
have under set fo may r	Examiner Note: If box 1 is checked, check either box (a) or (TWO MONTHS OF THE FINAL REJECTION. See MPEP 70 isions of time may be obtained under 37 CFR 1.136(a). The date been filed is the date for purposes of determining the period of exit 37 CFR 1.17(a) is calculated from: (1) the expiration date of the sorth in (b) above, if checked. Any reply received by the Office later reduce any earned patent term adjustment. See 37 CFR 1.704(b) ICE OF APPEAL	(b). ONLY CHECK BOX (b) WHEN THE 06.07(f). on which the petition under 37 CFR 1.1 tension and the corresponding amount shortened statutory period for reply origing than three months after the mailing da	FIRST REPLY WAS F 36(a) and the appropria of the fee. The approprinally set in the final Offi	ILED WITHIN Ite extension fee iate extension fee ice action: or (2) as			
2. 🗌	The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any external Notice of Appeal has been filed, any reply must be filed NDMENTS	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of th	hs of the date of ne appeal. Since			
3.		nsideration and/or search (see NO w); tter form for appeal by materially re	TE below); ducing or simplifying				
	The amendments are not in compliance with 37 CFR 1.13 Applicant's reply has overcome the following rejection(s)		mpliant Amendment	(PTOL-324).			
6.			timely filed amendme	ent canceling the			
	For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is provided the status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: Claim(s) withdrawn from consideration:	☐ will not be entered, or b) ☐ will vided below or appended.	ll be entered and an e	explanation of			
	DAVIT OR OTHER EVIDENCE The affidavit or other evidence filed after a final action, bu because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e).	it before or on the date of filing a No d sufficient reasons why the affidav	otice of Appeal will <u>nc</u> rit or other evidence is	ot be entered s necessary and			
	The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to o showing a good and sufficient reasons why it is necessary.	overcome <u>all</u> rejections under appea y and was not earlier presented. S	al and/or appellant fa ee 37 CFR 41.33(d)(ils to provide a 1).			
REQ	The affidavit or other evidence is entered. An explanation UEST FOR RECONSIDERATION/OTHER The request for reconsideration has been considered by		-				
	The request for reconsideration has been considered bu See continuation sheet.			nce decause:			
	Note the attached Information Disclosure Statement(s). (Other:	(P10/SB/08 or P10-1449) Paper N	lo(s)				

Continuation Sheet (PTO-303)

Application No. 09 8 05, 748

In re page 10, applicant's representative states: "In response to the Applicants' previous traversal of the holding of Office [sic] Notice by the Examiner, the Examiner cites col. 4, lines 52-56 of U.S. Patent No. 6,567,985, issued in the name of Ishii (hereinafter referred to as Ishii) for the equivalence between the number of frames and the passage of time. The Applicants would like to point out that this rejection formerly was an obviousness based on a combination of Dimitrova et al. with Yeo et al. The Applicants, respectfully, point out that this rejection no longer exists. The current rejection of Claims 11-12 and 41-42 is based on a combination of Marino et al. with Dimitrova et al. As discussed further infra, Marino et al, is not available as a reference either under the provisions of either 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is respectfully, traversed."

The examiner respectfully disagrees with several of the above statements. Although the non-final rejection did include a statement of Official Notice, the final rejection was based on the amended claims 1 and 31, making those claims, and all claims dependent thereon, subject to final rejection. Further, the examiner has not used any reference issued to Marino et al. Rather, the examiner used Martino et al (6,473,095), which was cited in the non-final office action and is therefore available as a reference under 35 USC 102 (b).

In re page 11, applicant's representative states: "The previous amendment submitted February 3, 2005 by the Applicants amended Claims 1 and 31 of the present application for invention. The amendments made were narrowing amendments and not broadening amendments. The Final Office Action dated June 15, 2005 includes a rejection under the provisions of 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,437,095 issued in the name of Marino et al. and U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. is incorporated by reference into U.S. Patent No. 6,473,095 issued in the name of Marino et al. It should be noted that both of these references were cited as prior art references prior [sic] the amendment submitted February 3, 2005 by the Applicant. There is no reason why this anticipation rejection should not have been made earlier. The only rejections based on prior art that were formerly made against the claims to the present invention were based on obviousness. The previous amendment submitted February 3, 2005 by the Applicants were narrowing amendments and not broadening amendments; therefore, these amendments could not have been the cause for a new anticipation rejection where only obviousness rejections formerly existed. As previously stated, both references were already cited. This anticipation rejection was not caused by any action on the part of the Applicants. Accordingly, the holding of finality is premature."

The examiner respectfully disagrees with this conclusion. The reason the anticipation rejection was not made sooner was because the original claim recitations did not require a search of the prior art that revealed the Martino reference. At the time of the non-final rejection, the examiner was unaware that Dimitrova et al was incorporated by reference into the Martino reference, and had no reason to be aware of that incorporation. The applicant's amendment required further search, which revealed the Martino reference, and the subsequent disclosure that Dimitrova et al was incorporated by reference into the Martino et al reference. The fact that the amendment was narrowing the scope of the claims and not broadening them does not change the fact that the amendment changed the scope of the claims, making a final rejection on the basis of the amended claim language proper. See MPEP 706.07(a).

In re page 12, applicant states: "The Applicants, respectfully, assert that Marino et al. do not qualify as prior art under the provisions of any of the paragraphs of 35 §U.S.C. 102. The Applicants further assert that Marino et al. do not qualify as prior art under any of the paragraphs of 35 §U.S.C. 103. Marino et al. was a pending, unpublished application at the time of filing for the present application for invention. Marino et al. was also commonly owned with the present application for invention at the time of filing for the present application for invention. Therefore, Marino et al. do not qualify as a prior art reference under any of the paragraphs of 35 §U.S.C. 102 or 35 §U.S.C. 103."

The examiner again respectfully disagrees. Martino et al, although sharing a common assignee with the present application, has a different inventive entity: none of the named inventors in Martino et al are named in the application, and therefore fits the definition of "by another." Further, the applicant's representative's statement is not sufficient according to MPEP 706.02(I), which states that the application and the reference must be owned by, or subject to an obligation of assignment to, the same person at the time the invention was made. The applicant's representative has stated that the application and the reference were commonly owned at the time of filing, which is not sufficient to disqualify the reference under 35 §U.S.C.103.

James J. Groody
Supervisory Patent Examiner
Art Unit 269 24 (6